IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1676 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRABHAKAR D MARATHE
Versus
STATE OF GUJARAT

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Appearance :
MS FARNANDIS for MR RD RAVAL for the Petitioner
MR KRUNAL D PANDYA, ASSTT GOVERNMENT PLEADER for the Respondents

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 14/12/2007

ORAL JUDGMENT

1. Heard the learned counsel for the parties. The petitioner, a retired employee of the State, has moved this Court under Article 226 of the Constitution of India challenging the initiation of Disciplinary proceedings against him, on the ground that chargesheet could not have been issued at such

a belated stage. Therefore, the same is contrary to the principle of natural justice and, therefore, the same deserves to be quashed and set aside.

2. The facts, in brief, deserve to be set out as under in order to appreciate the controversy in this matter.

2.1. The petitioner joined the service in the year 1961. He came to be promoted as Deputy Engineer in 1979. In 1990-1991, the petitioner was required to hold additional charge of the post of Deputy Engineer, Narmada Project Main Canal, Sub Division at Bodeli, Taluka Sankheda, District Vadodara in addition to his work at Sub Division Vaghodia, District Vadodara. Thus, he was discharging dual duties.

2.2. Again in the year 1994, when the petitioner was working as Deputy Engineer Colony Sub Division No.5 at Vadodara, he was holding additional charge of Narmada Project Colony Sub Division No.56 at Bharuch for four months. The petitioner was, thereafter, promoted as Executive Engineer on 19.12.1995 and he was retired as Executive Engineer on attaining the age of superannuation with effect from 31.01.1998.

2.3. The petitioner received a show cause notice dated 19.3.1995. The show cause notice was pertaining to some incident of 1992-1994. The petitioner replied to the show cause notice, vide letter dated 19/20.1.1996 and explained as to why he

was not liable to receive the chargesheet. The reply was found to be unsatisfactory by the respondent and, ultimately, the chargesheet came to be issued on 29.1.1998 just two days to the date of his superannuation. The petitioner has alleged that the chargesheet was malafide and was issued in order harass him. The said chargesheet is impugned in the present petition.

3. The respondent through its Under-Secretary, filed reply on 22.6.1998, resisting the petition.

4. Heard the learned counsel for the parties and perused the record. This Court on 3.12.2007, was constrained to pass the following order:

> "1. The petitioner under Article 226 of the Constitution of India has challenged the chargesheet dated 29.1.1998 on the ground that the same is issued malafide only with a view to harass him and deny him the retiral dues as he was to retire and in fact retired on 31.1.1998. The order dated 31.1.1998 permitting to retire on his attaining superannuation age stipulates that his pension and gratuity etc. would be subject to Rule 189 (A) and 189(B).
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> 2. The affidavit-in-reply is filed on 22.6.1998. Thereafter no further affidavit-in-reply is filed indicating that was there any outcome of inquiry proceedings.
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> 3. Ms. Farnandis, learned counsel for Mr. Raval for the petitioner makes a statement at bar that the petitioner has informed that even inquiry has not been started.

> 4. The fact deserves to be noted that in this matter at no stage any ad-interim or interim relief had been granted restraining the respondents from continuing the inquiry. Mr. Pandya, learned AGP makes a request for sometime to ascertain the facts. The time is granted with specific observation that under no circumstances any time shall be granted as the matter is very old and retired employee is left hie and dry without admissible retiral dues on the ground of pending of so called inquiry. The time is granted upto 14.12.2007 at the request of Mr. Pandya, learned AGP and if by 14.12.2007 no appropriate justification for not even initiating the inquiry or proceedings is placed on record, this matter shall be allowed straight way without further opportunity to the State. S.O to 14.12.2007 on fixed board."

5. Today, Shri Krunal D. Pandya, learned Assistant Government Pleader, submitted that the Inquiry Officer is appointed on 07.12.2007. This statement is made under the instructions from Under-Secretary Shri H.N. Chaudhari, Narmada & Water Resources Water Supply and Kalpsar Department. He further submitted that there were 38 officers facing such inquiry and, therefore, the delay has occurred. He submitted that some time be granted for completing the inquiry.

6. Learned counsel Ms. Farnandis for the petitioner submitted that no such permission be granted as the inquiry will be in actual futility. The petitioner has suffered all these years, as a sword in the form of pendency of the proceedings was always hanging on him. The petitioner was deprived of all retiral dues admissible to him and granting of provisional pension

would not absolve the respondent from not conducting the inquiry in time. She submitted that, in view of this, the petition be allowed.

7. The learned counsel for the petitioner relied upon the following decisions of this Court as well as the Apex Court in support of her submissions about the belated inquiry:

i) Judgment and order dated 20.7.2007 (Coram: S.R. Brahmbhatt, J.) in Special Civil Application No.7346 of 1996,

ii) Judgment and order dated 10.12.2004 (Coram: Anil S. Dave,J.) in Special Civil Application No.3630 of 1995

iii) In the case of Chandrakhanker Chunilal Vyas Vs State of Gujarat reported in 1977(2)SLR 270;

iv) in the case of M.N. Mewada Vs. State of Gujarat and another reported in SLR 1976(2) 666;

v) in the case of Chaturbhuj A. Sahu Vs. State of Gujarat and another reported in 2006(3) 2007; and

vi) in the case of M.V. Bijlani Vs. Union of India and others reported in (2006)5 SCC 88.

8. Shri Pandya, learned Assistant Government Pleader, submitted that mere delay in proceedings would not entitle the petitioner for quashing of the disciplinary proceedings. However, Shri Pandya could not explain the delay on the part of the respondent State, except orally submitting that there were 38 officers facing such delayed chargesheets and,

therefore, the delay occurred.

9. In the reply, that was filed in the year 1998, the respondent has attempted to explain the delay in para 4.12 that the preliminary report was received only in the year 1995 and, considering the number of persons involved, as the preliminary report was itself voluminous, there was delay in issuing the chargesheet.

10. It deserves to be noted that assuming for examining the plea justifying the delay to be acceptable, then also, the State has not explained as to why time was taken in appointing the Inquiry Officer, especially when the chargesheet itself was issued way back in the year 1998 when there was no stay operating against conducting of the inquiry. The incident pertains to that of the year 1992-1994 and, therefore, inordinate delay in issuing the chargesheet and even appointing the Inquiry Officer would itself strongly be against continuation of the inquiry. The delay *per-se*, in this case, could be said to be sufficient to spell out the prejudice caused to a retired Government employee, who is before this Court, claiming that the inquiry be dropped right from 1998. It also deserves to be noted that the petitioner was retired on 31.01.1998 and just two days prior thereto, the chargesheet was issued. Specially when a retired employee is agitated with disciplinary proceedings, it was expected that the State should act promptly in issuing the

chargesheet and completing the disciplinary proceedings. The inordinate delay in issuing the chargesheet and appointing the Inquiry Officer would, in any way, not justify the stand of the Government for seeking permission to complete the inquiry. The Disciplinary Rules as well as the principle of natural justice would surely go to show that the inquiry proceedings, if now permitted, the opportunity requires to be afforded to the petitioner. The incident is admittedly of 1992-1994 and the inquiry in such incident in the 2007 can never be permitted. On this short ground alone, the petition deserves to be allowed. Chargesheet dated 29.1.1998 qua the present petitioner is hereby quashed and set aside. Rule is made absolute. No cost.

11. The respondent is directed to pay all the retiral dues to the petitioner, as if the chargesheet had never been issued, within a period of 30 days from the date of the writ of this order. The amount shall be paid with 8% interest from completion of 30 days of the receipt of this order till it is paid.

(S.R.BRAHMBHATT, J.)

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